not "interested" in the person threatened. It appears, therefore, that the act intended and done by the accused lacked an essential element of the offence of committing criminal intimidation as defined in section 503 of the Indian Penal Code (Act XLV of 1860). But it does not follow that the accused could still be legally convicted of an attempt to commit that offence. It is possible to attempt to commit an impossible theft, and so offend against the Code, because theft is itself an offence against the Code, and may, therefore, be attempted within the meaning of the Code. But no criminal liability can be incurred under the Code by an attempt to do an act, which, if done, would not be an offence against the Code. In the present case, therefore, if the accused was not guilty of committing criminal intimidation, because the act intended and done by him lacked an ingredient of that offence, he could not be guilty of the attempt of which he has been convicted."

For the purposes of the present case, I think it is important to emphasise the words: "It is possible to attempt to commit an impossible theft, and so offend against the Code, because theft is itself an offence against the Code, and may, therefore, be attempted within the meaning of the Code." On the analogy of this proposition, with which I am respectfully in complete agreement, it seems to me to be possible to attempt to cause an impossible miscarriage and still offend against the Code because the voluntary causing of a miscarriage is itself an offence against the Code and may, therefore, be attempted within the meaning of the Code.

The vital operative words of section 511 in my view are the words: "and in such attempt does any act towards the commission of such offence." In *Queen Empress v. Luzman Naryan Joshi*[12], Sir Lawrence Jenkins, C.J., defined "attempt" as "an intentional preparatory action which failed in its object through circumstances independent of the person who seeks its accomplishment." And the same Judge in *Queen-Empress v. Vinayek Narayen Bhatye*[13] defined "attempt" as "when a man does an intentional act with a view to attain a certain end, and fails in his object through some circumstance independent of his own will." These two definitions were referred to by Lort-Williams, J., in his judgment in *Asgaralli Pradhanin v. Emperor*[9]. In *Asgaralli's* case, which was concerned with a charge of attempting to cause a miscarriage, the accused was proved to have attempted to administer to the complainant two chemicals, a liquid and a powder, for the purpose of procuring a miscarriage but there was no evidence to show that either of the chemicals was capable of operating as an abortifacient; and on appeal against conviction, the appellate Court held that on the facts the appellant could not be convicted of an attempt to cause a miscarriage because what he did was not an "act done towards the commission of the offence" of causing miscarriage.

"Neither the liquid nor the powder being harmful, they could not have caused a miscarriage. The appellant's failure was not due to a factor independent of himself."

In the present case, the circumstances are different. The evidence clearly showed that it was the intention of the appellant to bring about a miscarriage and she could not have made the attempt unless she believed the complainant to be pregnant. If the complainant was not pregnant, then the failure of the attempt was due to a factor independent of the appellant herself. Her attempt was prevented or frustrated by the non-existence of a circumstance which she believed to exist. As I see it, she is in exactly the same position as the would-be pick-pocket who, believing that there is or may be something capable of being stolen in the pocket which he decides to pick, attempts to steal it and finds his attempt foiled by a circumstance independent of himself, namely, the non-existence of anything capable of being stolen. The circumstances of the present case seem to me to be exactly covered by the illustrations to section 511 of the Penal Code, even though these illustrations speak of attempts to commit a different type of offence. I would, therefore, answer the question referred to us for determination by the learned appellate Judge in the negative and would affirm the conviction and sentence of the lower Court.

Appeal dismissed.

M.M.P. SAMINATHAN & ORS. v. REG.

[A. Cr. J. (Chua J.) September 26, 1957]

[Singapore — Magistrate's Appeals Nos. 148, 149 and 150 of 1957]

Local Authority — Municipal Ordinance (Cap.133 of 1936 Edn.), s.194(4)(a) — "Food" — Meaning of — Whether raw meat, raw vegetables and live poultry are "food" within the meaning of s.194(4)(a) of the Municipal Ordinance.

The term "food" in section 194(4)(a) of the Municipal Ordinance means any article used as food for human consumption. Meat and vegetables are food in that they are nutritive, therefore raw meat and raw vegetables are "food" within the meaning of that section, but not live poultry. Poultry becomes "food" when it has been killed.

MAGISTRATE'S APPEALS.

David Marshall for the appellants.

E. H. D'Netto (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Chua J.: — The same question of law is raised in these three appeals.

In Magistrate's Appeal No. 148 of 1957 the appellant was charged that "you did set up an unlicensed mutton stall at Lim Tua Tow Road on a private land to which the public has access on July 12, 1957 at 8.15 a.m. in breach of section 194(4)(a) and punishable under section 194(4) of the Municipal Ordinance Chapter 133".

In Magistrate's Appeal No. 149 of 1957 the appellant was charged that "you did expose for sale poultry in a basket on a bicycle occupying a stationary position at Lim Tua Tow Road on a private land to which the public has access on July 12, 1957 at 8.30 a.m. in breach of section 194(4)(a) and punishable under section 194(4) of the Municipal Ordinance Chapter 133".

In Magistrate's Appeal No. 150 of 1957 the appellant was charged that "you did set up an unlicensed vegetable stall on private land to which the public has access at Lim Tua Tow Road on July 13, 1957 at 8.15 a.m. in breach of section 194(4)(a) and punishable under section 194(4) of the Municipal Ordinance Chapter 133".

The appellant in each case was found guilty of the charge by the Magistrate and convicted. The Magistrate in exercise of his powers under section 8(1) of the Probation of Offenders Ordinance (Cap. 135) in each case made an order for absolute discharge.

Section 194(4)(a) of the Municipal Ordinance reads as follows:—

"Offences by unlicensed persons and persons setting up stalls.

(4) Any person who, not being licensed under this section within a Municipality —

(a) sets up a stall, table or show-board or uses a barrow, cart, tricycle or other receptacle occupying a stationary position in any street or public place or on any private land or open space or place to which the public has access, for the purposes of selling or exposing for sale any food or drink; or

(b) .....

shall be guilty of an offence, ...".

The only question raised in these three appeals is what is the meaning of the term "food" in section 194(4)(a)?

There is no definition of "food" in the Municipal Ordinance or in the Interpretation and General Clauses Ordinance (Cap. 2). By the Sale of Food and Drugs Ordinance (Cap. 148) the term "food" is defined merely to include every article used for food or drink by man other than drugs.

The Court therefore has to interpret the meaning of "food" as used in section 194(4)(a) of the Municipal Ordinance.

Mr. Marshall for the three appellants quoted the meaning of "food" from two dictionaries:—

(i) *Webster* New International Dictionary 2nd Edition at page 982:—

"Nutritive material absorbed or taken into the body of an organism which serves for purposes of growth, work, or repair and for the maintenance of the vital processes".

(ii) The *Shorter Oxford* English Dictionary 3rd Edition Volume 1 at page 728:—

"What one takes into the system to maintain life and growth and to supply waste".

Mr. Marshall urges that "food" in section 194(4)(a) means human food that can be consumed in its existing state without preparation and says that raw vegetables, raw mutton and poultry are not "food" within the meaning of section 194(4)(a).

Now, does "food" in section 194(4)(a) mean food for human consumption, or any food i.e. human food and otherwise?

Section 194(4)(a) is one of the sections appearing under the heading "Public Markets" and "Market" is defined in section 3 of the Municipal Ordinance as follows:—

"'Market' means any place, other than a shop, ordinarily used for the sale of animals or of meat, fish, fruit, vegetables, or other perishable articles of food for human consumption, and ....." (the underlining is mine).

One of the general purposes of the Municipal Ordinance is to safeguard public health and bearing in mind that "Market" is defined as any place ordinarily used for the sale of animals and articles of food for human consumption I come to the conclusion that "food" in section 194(4)(a) must mean "food" for human consumption.

I am, however, unable to agree with the contention of Mr. Marshall that the term "food" in section 194(4)(a) means food which is to be taken "in its existing state" without preparation.

The term "food" must be interpreted in its ordinary and popular sense namely as an article or kind of food. Such a meaning appears in the Shorter Oxford English Dictionary.

The Sale of Food and Drugs Ordinance (Cap. 148), which was enacted "To make better provision for the sale of food and drugs in a pure state", has the same object as the Municipal Ordinance, namely to safeguard public health, and "food" is there defined as including every article used for food or drink by man.

In my view the term "food" in section 194(4)(a) of the Municipal Ordinance means any article used as food for human consumption.

I do not think it is disputed that meat and vegetables are food in that they are nutritive. It follows therefore that in my opinion raw meat and raw vegetables are "food" within the meaning of section 194(4)(a) of the Municipal Ordinance.

In my opinion, however, live poultry is not "food" within the meaning of section 194(4)(a). Poultry becomes "food" when it has been killed and the sale is that of the flesh and not a live bird. Similarly one cannot say that a cow is "food" within the meaning of section 194(4)(a) until it has been slaughtered. It is to be noted that in the English Food and Drugs Act 1938 the term "article" in relation to food "does not include a live animal or bird".

In the result the appeal in case No. 149 of 1957 is allowed and the conviction is quashed, and the appeals in cases No. 148 of 1957 and No. 150 of 1957 are dismissed.

Order accordingly.

DAUD BIN AWANG NGAH & ORS. PUBLIC PROSECUTOR

[C. A. (Thomson C.J., Good and Smith JJ.) May 9, 1958]

[K. L. — F.M. Criminal Appeal No. 9 of 1958]

Criminal Law and Procedure — Incriminating evidence by co-accused — Warning to jury — Corroboration — Warning not matter of law.

There is no rule of law which demands that in every case where an accused person gives evidence which tends to incriminate a co-accused the jury should be warned that it is dangerous to convict upon such evidence unless it is corroborated. Whether or not such a warning should be given to the jury is not a matter of law. It is a matter to be decided in the light of the circumstances of each individual case.

Tan Cheng Seng & Anor. v. R.(3) followed. *Seah Chay Tee v. Public Prosecutor*(1) dissented from.

Cases referred to:—

(1) *Seah Chay Tee v. Public Prosecutor* (1948) M.L.J. 77.

(2) *R. v. Barnes & Anor.* (1940) 2 All E.R. 229; 27 Cr.App.R. 154; 56 L.T.R. 379.

(3) *Tan Cheng Seng & Anor. v. R.* (1948) M.L.J. 148, C.C.A.

(4) *Davies v. Director of Public Prosecutions* (1954) A.C. 378.

COURT OF APPEAL

P.P. Nair, Balwant Singh and *H.L. Wrigglesworth* for the appellants.

Ali bin Hassan (Federal Counsel) for the respondents.

Thomson C.J.: — These four appellants were tried jointly before Neal, J., and a jury at Kuala Trengganu for offences committed in connection with the death on 9th November, 1957, of one Abdullah bin Taib.

It was the case for the prosecution that the third and fourth appellants had hired the first and second appellants to kill the deceased man and that in pursuance of this arrangement the first two appellants had proceeded to the deceased man's place of business where the first appellant entered and killed him by striking him on the head with an axe while the second appellant kept watch outside.

On these allegations the first appellant was charged with murder in contravention of section 302 of the Penal Code, the second appellant was charged with murder in contravention of section 302 as read with section 34 of the Penal Code and the third and fourth appellants were each charged with abetment of murder in contravention of sections 109 and 302 of the Code.

In the event all four appellants were convicted of the offences charged against them and sentenced to death. All of them appealed against their convictions and their appeals were dismissed on 8th April, 1958.

Except on one point we do not consider it necessary to state our grounds of judgment beyond observing that there was evidence which, if it was believed, was sufficient to support each of the convictions and that we were unable to find any misdirection or lack of direction in the long and careful summing-up of the trial Judge. In the circumstances there could be no justification for interfering with the verdict of the jury.